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**IN THE
COURT OF APPEALS OF INDIANA**

D.J.,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 82A01-0706-JV-272
)	
STATE OF INDIANA,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause No. 82D01-0611-JD-447

October 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

D.J. appeals from his adjudication as a delinquent child for committing the following offenses, which would have been felonies if committed by an adult: burglary¹ as a Class A felony; robbery² as a Class B felony; attempted robbery³ as a Class A felony; and possession of cocaine⁴ as a Class D felony. He raises one issue, which we restate as whether the juvenile court abused its discretion when it ordered him to be committed to the Department of Correction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 27, 2006, D.J. and his friends, T.B. and Q.J., entered the home of Shad Hall in Evansville, Indiana, armed with guns. They all wore dark clothing and one wore a mask. D.J. had a .9-millimeter pistol, T.B. had a .25 caliber gun, and Q.J. carried a fake Uzi. The three order Jonathan Gilmore, Sean Bazzard, Michael Davis, Clyde Hendrix, and Matthew Goodwin to the floor and proceeded to rob them of their money and cell phones. Brittany Frank and Shad Hall were in the bedroom when one of the gunmen kicked open the door. As Hall tried to protect Frank, he was shot in the chest. The gunmen then fled. Hall was taken to the hospital and admitted.

The witnesses reported hearing one or two shots fired. T.B. and Q.J. claimed that D.J. was the one who shot Hall; D.J. maintained that T.B. was the one who shot Hall. When

¹ See IC 35-43-2-1(2).

² See IC 35-42-5-1.

³ See IC 35-42-5-1; 35-41-5-1.

⁴ See IC 35-48-4-6.

police officers went to D.J.'s home to speak with him about the robbery, they searched D.J.'s room and discovered cocaine in a dresser drawer.

On November 9, 2006, the State filed a delinquency petition alleging that D.J. committed burglary, which would be a Class A felony if committed by an adult, robbery, which would be a Class B felony if committed by an adult, attempted robbery, which would be a Class A felony if committed by an adult, and possession of cocaine, which would be a Class D felony if committed by an adult. D.J. admitted the truth of all four counts at a hearing held on November 13, 2006. After a dispositional hearing held on February 13, 2007, the juvenile court ordered as follows:

The Court now awards wardship of the child to the Indiana Department of Correction for housing in any correctional facility for children or any community-based correctional facility for children.

The Court further orders, in pursuant [sic] with IC 31-37-19-9, the juvenile shall be committed to the Indiana Department of Correction on a determinative disposition of three years and two hundred thirty-four days; i.e., until he is 18 years of age, due to the seriousness of the offenses, the juvenile's education and truancy issues, and the juvenile's substance abuse which was not and cannot be adequately handled on an outpatient basis. He is given credit for days served in detention.

Appellant's App. at 14-15. D.J. now appeals.

DISCUSSION AND DECISION

The specific disposition of a child adjudicated to be delinquent is generally left to the discretion of the juvenile court. *J.B. v. State*, 849 N.E.2d 714, 717 (Ind. Ct. App. 2006). That discretion is subject to the statutory considerations of the community's safety, the best interests of the child, the policy favoring the least restrictive alternative, family autonomy

and life, freedom of the child, and the participation of the parent, guardian, or custodian. *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006); *J.B.*, 849 N.E.2d at 717. We will reverse a juvenile disposition only for an abuse of discretion, “which occurs only if the [juvenile] court’s action is ‘clearly erroneous and against the logic and effect of the facts and circumstances before the court, or against the reasonable, probable, and actual deductions to be drawn therefrom.’” *J.B.*, 849 N.E.2d at 717.

D.J. argues that the juvenile court abused its discretion in its disposition, which committed him to the Department of Correction for a period of three years and two hundred thirty-four days. He claims that this commitment was punitive in nature and did not further the rehabilitative goals of the juvenile justice system. He contends that the juvenile court should have attempted to fashion a less restrictive plan for his rehabilitation.

IC 31-37-18-6 lists the factors that the juvenile court must consider in making a juvenile disposition:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

(A) in the least restrictive (most family like) and most appropriate setting available; and

(B) close to the parents’ home, consistent with the best interests and special needs of the child;

(2) least interferes with family autonomy;

(3) is least disruptive of family life;

(4) imposes the least restraint on the freedom of the child and the child’s parent, guardian, or custodian; and

- (5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

The statute requires placement in the least restrictive setting only if such placement is “consistent with the safety of the community and the best interest of the child.” IC 31-37-18-6. “In other words, ‘the statute recognizes that in certain situations the best interest of the child is better served by a more restrictive placement.’” *D.B. v. State*, 842 N.E.2d 399, 406 (Ind. Ct. App. 2006) (quoting *K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002), *trans. denied*).

Here, the juvenile court determined that commitment to the Department of Correction for the maximum sentence was appropriate. It partially based this determination on the seriousness of D.J.’s crimes. D.J. admitted to committing crimes, which would have been two Class A felonies, a Class B felony, and a Class D felony if committed by an adult. If D.J. had been an adult, this could have resulted in a sentence of over one hundred years. D.J. robbed five people at gunpoint and attempted to rob two others, which resulted in one person being shot. Additionally, cocaine was found in his dresser drawer, and at the time he was arrested, D.J. tested positive for cocaine and THC. Evidence was also presented that prior to the present crimes, D.J.’s mother had told a counselor that D.J. was regularly defiant with her, lost his temper easily, argued with adults at home and school, defied rules, and was resentful towards supportive adults. *Tr.* at 36. He had also admitted to using marijuana. *Id.* at 37-38. As a result of this behavior, treatment was suggested, which D.J. failed to obtain. Further, a delinquency petition was alleged against D.J. due to truancy on October 26, 2006.

Clearly, D.J.'s actions in the present crimes posed a threat to the safety of the community. Because D.J. failed to follow through on previous attempts at counseling, the juvenile court also determined that the disposition was in the best interest of D.J. because he could obtain counseling and substance abuse counseling while in the Department of Correction. *Id.* at 55. The court was also hopeful that D.J. would earn a high school diploma and gain proper training in order to become a productive adult in the community when he is released. *Id.* at 55-56. Although this was D.J.'s first time in juvenile court and he had behaved well in confinement prior to disposition, we conclude that the juvenile court's disposition was consistent with the safety of the community and the best interest of the child. The juvenile court did not abuse its discretion in ordering D.J. to be placed in the Department of Correction.

Affirmed.

ROBB, J., and BARNES, J., concur.